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Representing the United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,)	
)	Case No. 2:17-cr-337-RFB-PAL
Plaintiff,)	
)	JOINT STIPULATION FOR
vs.)	DETERMINATION OF MENTAL
)	COMPETENCY TO STAND TRIAL
TERENCE DEMARIUS TUCKER,)	
)	
Defendant.)	

CERTIFICATION: This stipulation is timely filed under Title 18, United States Code Section 4241(a)¹ and the Court's December 8, 2017 Order reflected in the Minutes of Proceedings at ECF 31.

STIPULATION

The United States, by and through the Acting United States Attorney Steven W. Myhre and Assistant United States Attorney Daniel J. Cowhig, and the defendant TERENCE DEMARIUS TUCKER, by and through his counsel Assistant Federal Public Defender Raquel

¹ "[A]t any time after the commencement of a prosecution ... the Government may file motion for a hearing to determine the mental competency of the defendant."

1 Lazo, jointly stipulate and move under Title 18, United States Code Section 4241(a) for a
2 hearing to determine the mental competency of the defendant. The offense conduct alleged, the
3 one hundred percent (100%) disability rating awarded to the defendant by the Department of
4 Veterans' Affairs based upon specified mental health conditions, and the Department of
5 Veterans' Affairs administrative determination that the defendant is not competent to manage
6 his own financial affairs give the attorney for the United States and the counsel for defendant
7 TUCKER "reasonable cause to believe that the defendant may presently be suffering from a
8 mental disease or defect rendering him mentally incompetent to the extent that he is unable to
9 understand the nature and consequences of the proceedings against him or to assist properly in
10 his defense." 18 U.S.C. 4241(a).

11 The parties hereby stipulate and agree that the Court should designate Dr. Lisa Foerster,
12 Psy. D., of Clark County, Nevada, to perform the evaluation ordered. While Dr. Foerster has
13 not previously performed competency evaluations in Federal criminal matters, she has
14 performed numerous evaluations for State courts in both criminal and civil matters. Dr.
15 Foerster's Curriculum Vitae is enclosed at Attachment A. The parties stipulate to Dr. Foerster's
16 qualification as an expert witness before the Court for the purposes of this competency
17 evaluation under Federal Rule of Evidence 702 and Kumho Tire Co. v. Carmichael, 526 U.S.
18 137 (1999).

19 The parties note that the necessary government contracting arrangements to retain Dr.
20 Foerster will result in a delay of two to four weeks before she will be able to perform the
21 ordered evaluation.

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1 POINTS AND AUTHORITIES

2 Under Title 18, United States Code Section 4241(a), the Court shall grant a motion for a
3 hearing to determine the mental competency of the defendant if there is “reasonable cause to
4 believe that the defendant may presently be suffering from a mental disease or defect rendering
5 him mentally incompetent to the extent that he is unable to understand the nature and
6 consequences of the proceedings against him or to assist properly in his defense.” *Id.*

7 Under Title 18, United States Code Section 4241(b), “[p]rior to the date of the hearing,
8 the Court may order that a psychiatric or psychological examination of the defendant be
9 conducted, and that a psychiatric or psychological report be filed with the Court, pursuant to the
10 provisions of section 4247(b) and (c).”

11 RELIEF REQUESTED

12 The parties jointly ask this Honorable Court to order a hearing under Title 18, United
13 States Code, Section 4241(a) to determine the mental competency of the defendant. Prior to
14 that hearing, the parties ask this Honorable Court to order a psychiatric or psychological
15 examination of the defendant to determine whether the defendant may presently be suffering
16 from a mental disease or defect rendering him mentally incompetent to the extent that he is
17 unable to understand the nature and consequences of the proceedings against him or to assist
18 properly in his defense. The parties request that the Honorable Court designate Dr. Lisa
19 Foerster, Psy. D., of Clark County, Nevada, to perform the evaluation ordered.

20 As a result of this stipulation, the parties ask that this Honorable Court grant in part the
21 Government’s submitted Motion for Determination of Mental Competency to Stand Trial at
22 ECF 30 as reflected in this stipulation. The parties further request that this Honorable Court
23 vacate the hearing regarding the Government’s motion at ECF 30 set for Friday, December 22,
24 2017, the order that government counsel have a representative from the Bureau of Prisons

1 appear telephonically at that hearing, and the order that the defendant's response to the
2 Government motion due Monday, December 18, 2017, all set forth in the Minutes of
3 Proceedings at ECF 31.

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5 STEVEN W. MYHRE
6 Acting United States Attorney

7
8 /s/
9 RAQUEL LAZO
Assistant Federal Public Defender
Counsel for Terence Demarius Tucker

7
8 /s/
9 DANIEL J. COWHIG
Assistant United States Attorney

-oOo-

Defendant.

PROPOSED ORDER

2. In accordance with 18 U.S.C. §§ 4241 and 4247, I order that prior to that hearing the defendant TERENCE DEMARIUS TUCKER undergo a psychiatric or psychological evaluation to determine whether defendant TUCKER is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

1 3. The examination conducted pursuant to this order shall be conducted by one or
2 more licensed or certified psychiatrists or clinical psychologists. 18 U.S.C. § 4247(b). I hereby
3 designate Dr. Lisa Foerster, Psy. D., of Clark County, Nevada, to conduct this examination.

4 4. A psychiatric or psychological report shall be prepared by the examiner
5 designated to conduct the psychiatric or psychological examination. The person designated to
6 conduct the psychiatric or psychological examination shall file the report, under seal, with the
7 court and provide copies to the Assistant United States Attorney and the Assistant Federal
8 Public Defender in this case.

9 5. The report shall include:
10 a. The defendant's history and present symptoms;
11 b. A description of the psychiatric, psychological or medical tests that were
12 employed and their results;
13 c. The examiner's findings; and
14 d. The examiner's opinions concerning whether the defendant is suffering
15 from a mental disease or defect rendering him mentally incompetent to the extent that he is
16 unable to understand the nature and consequences of the proceedings against him, or to assist
17 properly in his defense.

18 The Court finds that the time required to carry out the above-described psychiatric or
19 psychological examination of defendant TUCKER and the Court's determination of the
20 defendant's competency to stand trial is excludable time under the United States Constitution,
21 the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(A), and Rule 5.1 of the Federal Rules of Criminal
22 Procedure.

1 **IT IS FURTHER ORDERED** that the Court shall hold a status hearing on this matter when
2 the Court has received the completed psychiatric or psychological report under seal,

3 **IT IS FURTHER ORDERED** that the Government's submitted Motion for Determination of
4 Mental Competency to Stand Trial at **ECF 30** is hereby **GRANTED IN PART** as reflected in
5 this order.

6 **IT IS FURTHER ORDERED** that the hearing regarding the Government's submitted motion
7 at ECF 30 for psychiatric evaluation and competency determination set for Friday, December
8 22, 2017, the order that government counsel have a representative from the Bureau of Prisons
9 appear telephonically at that hearing, and the order that the defendant's response to the
10 Government motion be due Monday, December 18, 2017, all set forth in the Minutes of
11 Proceedings at ECF 31, are hereby **VACATED**.

12 **IT IS SO ORDERED** this December 18th, 2017.

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RICHARD F. BOULWARE, II
United States District Judge